

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA**

LAWRENCE PETERSON,)
)
Plaintiff,)
)
vs.)
)
MRS. FLOWERS Correctional Officer,)
Disciplinary Screening Officer,)
BRAIN SMITH Superintendent,)
T RAY Correctional Officer/Disciplinary)
Screening Officer,)
C A PENFOLD Assistant Administrator,)
Grievance Supervisor,)
GEORGE CRAIG Assistant)
Administrator, Grievance Supervisor, all)
sued in their individual, official)
capacities, under color of state law,)
)
Defendants.)

No. 1:12-cv-00564-JMS-TAB

Entry and Order Dismissing Action

I.

Lawrence Peterson is a state prisoner who sues prison officers and administrators because, he alleges, four defendants improperly imposed “no-contact” restrictions on his visitations and a fifth defendant improperly ignored or rejected Peterson’s grievances on this subject. Peterson seeks reinstatement of his contact visitation status along with money damages. His action is brought pursuant to 42 U.S.C. § 1983, “the ubiquitous tort remedy for deprivations of rights secured by federal law (primarily the Fourteenth Amendment) by persons acting under color of state law.” *Jackson v. City of Joliet*, 715 F.2d 1200, 1201 (7th Cir. 1983), *cert. denied*, 465 U.S. 1049 (1984).

Because Peterson is a Aprisoner® as defined by 28 U.S.C. ' 1915(h), the court has screened his complaint as required by 28 U.S.C. ' 1915A(b). Pursuant to this statute, “[a] complaint is subject to dismissal for failure to state a claim if the allegations, taken as true, show that plaintiff is not entitled to relief.” *Jones v. Bock*,

127 S. Ct. 910, 921 (2007). A complaint falls within this category if it “alleg[es] facts that show there is no viable claim.” *Pugh v. Tribune Co.*, 521 F.3d 686, 699 (7th Cir. 2008).

“[T]he first step in any [§ 1983] claim is to identify the specific constitutional right infringed.” *Albright v. Oliver*, 510 U.S. 266, 271 (1994). No viable claim is asserted pursuant to § 1983, however, unless Peterson asserts the violation of a federal right. *See Middlesex County Sewerage Auth. v. Nat'l Sea Clammers Ass'n*, 453 U.S. 1, 19 (1981); *Juriss v. McGowan*, 957 F.2d 345, 349 n.1 (7th Cir. 1992) (without a predicate constitutional violation one cannot make out a *prima facie* case under § 1983). Peterson’s action falls short in this regard as to both the visitation claim—because the denial of prison access to a visitor is well within the restrictions contemplated by a prison sentence, *Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 461 (1989); *Nkrumah v. Clark*, 1992 WL 238336, *4 (7th Cir. 1992) (citing *Mayo v. Lane*, 867 F.2d 374, 379 (7th Cir. 1989) (Flaum, J., concurring)—and as to the grievance-based claim—because the Seventh Circuit has specifically denounc[ed] a Fourteenth Amendment substantive due-process right to an inmate grievance procedure.” *Grieverson v. Anderson*, 538 F.3d 763, 772 (7th Cir. 2008).

Federal courts must take cognizance of the valid constitutional claims of prison inmates. *Turner v. Safley*, 482 U.S. 78, 84 (1987)). As explained above, no such claim has been asserted here.

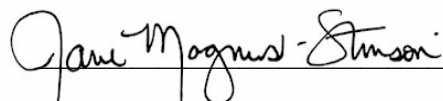
The action is dismissed pursuant to 28 U.S.C. § 1915A(b) because the complaint fails to state a claim upon which relief can be granted. The plaintiff has pled himself out of court “by alleging facts that show there is no viable claim.” *Pugh v. Tribune Co.*, 521 F.3d 686, 699 (7th Cir. 2008); *see also Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990) (“Dismissal under Rule 12(b)(6) can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.”).

II.

Dismissal of the action pursuant to 28 U.S.C. § 1915A(b) is therefore mandatory, *Gladney v. Pendleton Corr. Facility*, 302 F.3d 773, 775 (7th Cir. 2002), and judgment consistent with this Entry shall now issue.

IT IS SO ORDERED.

Date: 09/05/2012



Hon. Jane Magnus-Stinson, Judge
United States District Court
Southern District of Indiana

Distribution:

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